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## Judiciary Committee

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### ESSB 5204

**Title:** An act relating to chattel liens.

**Brief Description:** Modifying the chattel lien process.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Brandland, Kastama, Sheldon, Rasmussen, Spanel, Hargrove and Shin).

#### Brief Summary of Engrossed Substitute Bill

- Establishes procedures for challenging frivolous or excessive chattel liens;
- Requires a lien holder, when selling property under the summary foreclosure process, to disclose the existence of any known security interest or prior lien;
- Specifies that the purchaser of property in a summary foreclosure proceeding takes the property subject to any superior lien or security interest and, in the case of property requiring a certificate of title from the Department of Licensing (DOL), the superior lien or security interest must be reflected in the new certificate of title;
- Prohibits the DOL from transferring a vehicle title through the chattel lien process unless certain documentation is submitted to the DOL.

**Hearing Date:** 2/20/06

**Staff:** Trudes Tango (786-7384).

#### Background:

A person providing labor or materials in the construction or repair of any chattel (personal property) at the request of the chattel owner, may file a lien on the chattel if the owner fails to pay for the labor or materials. Notice of the lien must be filed with the county auditor in the county in which the chattel is kept. Chattel liens follow a prescribed priority to other liens or encumbrances.

Chattel liens may be enforced by judicial procedure or by summary foreclosure. Summary foreclosure allows a lien holder to sell or otherwise dispose of the property and apply the proceeds to satisfy expenses involved in the sale, the lien that was the basis of the foreclosure, and other subordinate liens or debts secured by the property. With certain exceptions, the lien holder must provide "reasonable notice" of the foreclosure sale to the lien debtor and any other party with a

security interest. The statute does not specify what constitutes "reasonable notification." A good faith purchaser of property in a summary foreclosure takes the property free of the lien that was the basis for the foreclosure and any subordinate lien or security interest.

Statutes and rules governing the Department of Licensing (DOL) establish procedures for transferring title (or "certificate of ownership") in a vehicle. An application for a new certificate of ownership is required when the vehicle is sold, repossessed, or a lien holder is added. Before issuing a new certificate of ownership, the DOL must be satisfied as to the ownership of the vehicle and that all security interests are disclosed. With certain exceptions, in order to record a secured interest on a certificate of ownership, there must be a security agreement between the registered owner and the legal owner.

According to the agency's rules, the DOL generally will not issue a new certificate of ownership as a result of a chattel lien without a court order when there is more than one lien against the vehicle. A court order must specifically authorize the removal of the other liens or resolve the secured interests. The applicant for a new certificate of ownership may also negotiate with the lien holder or secured party to obtain a release of interest or obtain a new security agreement.

**Summary of Bill:**

A process for challenging a frivolous or excessive chattel lien is created. A property owner who believes a lien is frivolous and made without reasonable cause or is clearly excessive may apply to the superior court for a show cause hearing. The applicant must serve notice to the lien claimant by first class mail, certified or registered mail, or by personal service.

The hearing must be set no earlier than six but no later than 15 days after service of the show cause motion. If, following a hearing, the court finds that the lien is frivolous and made without reasonable cause, the court must release the lien, or reduce the lien if the lien is clearly excessive. The court must also award costs and reasonable attorneys' fees to the applicant. If, however, the court finds for the lien claimant, the applicant must pay the claimant's costs and reasonable attorneys' fees. If the lien claimant fails to appear, the court shall order the lien released and impose costs and reasonable attorneys' fees against the claimant.

Notification of the sale of personal property in a summary foreclosure shall be sent by first class mail and registered or certified mail.

Before accepting any bid or offer for purchase in a summary foreclosure, the lien holder must disclose the existence of any known prior lien or security interest in the property. The purchaser takes subject to any lien or security interest that is superior to the lien under which the sale is made. If the property is subject to a certificate of title, the DOL must not transfer title through summary foreclosure unless the new certificate of title reflects the superior lien or security interest. If a new certificate of title is issued that does not reflect this, the holder of the lien or security interest may obtain a replacement certificate of title. The DOL must notify the purchaser that a replacement title has been issued.

The DOL shall not transfer title of a vehicle through the chattel lien process unless there is documentation that the chattel lien was filed with the county auditor and notice of the lien was served on the registered owner.

**Appropriation:** None.

**Fiscal Note:** Requested on February 20, 2006.

**Effective Date:** The bill takes effect on October 1, 2006.